

## 37 Am. Jur. 2d Fraud and Deceit § 31

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### Fraud and Deceit

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### II. Elements and Requisites

#### B. Particular Elements or Considerations

##### 1. In General

## § 31. Mental capacity and competence of parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

The mental capacity, education, and business knowledge of each party are of importance in determining whether one party was, in fact, imposed upon by the representations or conduct of the other and whether he or she had a right to rely thereon.<sup>1</sup> What would constitute fraud in a given instance might not be fraudulent when exercised toward another person, the test being the actual effect of the false representation on the person's mind in a particular case, depending on whether that mind is strong and circumspect or weak and credulous.<sup>2</sup> Thus, exceptionally gullible or ignorant people may recover from a defendant who took advantage of them in circumstances where persons of normal intelligence would not have been misled.<sup>3</sup> Therefore, although the element of disparity in business experience is not of itself a sufficient ground for relief, the law does not ignore such disparity, especially where the inexperience of youth is coupled with an added factor of special trust and confidence growing out of a reasonable assumption of the existence of a genuine and close friendship between the parties.<sup>4</sup>

### Observation:

Where one of the parties to a transaction is shown to be mentally weak, the circumstances will be more closely scrutinized, and weight will be given to slighter evidence of imposition and circumvention.<sup>5</sup>

A misrepresentation of the nature of an instrument presented for the signature of one who cannot read is actionable fraud as a false representation of an existing material fact.<sup>6</sup>

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Footnotes

- <sup>1</sup> Smith v. Mosbarger, 18 Ariz. 19, 156 P. 79 (1916); Van Natta v. Snyder, 98 Kan. 102, 157 P. 432 (1916).
- <sup>2</sup> Wilke v. Coinway, Inc., 257 Cal. App. 2d 126, 64 Cal. Rptr. 845 (1st Dist. 1967).
- <sup>3</sup> Black v. J. N. Blair & Co., 145 Cal. App. 2d 524, 302 P.2d 609 (3d Dist. 1956).
- <sup>4</sup> Spiess v. Brandt, 230 Minn. 246, 41 N.W.2d 561, 27 A.L.R.2d 1 (1950).  
As to the effect of a special relationship or trust, see §§ 34 to 36.
- <sup>5</sup> International Life Ins. Co. v. Herbert, 334 S.W.2d 525 (Tex. Civ. App. Waco 1960), writ refused n.r.e., (July 6, 1960).
- <sup>6</sup> Fults v. Duren, 427 S.W.2d 951 (Tex. Civ. App. Houston 1st Dist. 1968), writ refused n.r.e., (Oct. 2, 1968).

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